Exhibit 29

Page 373

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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ANTHONY BAFFO,

Plaintiff, Index No.

10 Civ 1245

-against-

(LDW) (ETB)

NEW YORK INSTITUTE OF TECHNOLOGY; ROBERT RIZZUTO, in his official and individual capacities; and LEONARD AUBREY, in his official and individual capacities,

Defendants.

April 28, 2011 9:14 a.m.

Continued deposition of ROBERT RIZZUTO, held at the offices of Thompson Wigdor & Gilly LLP, 85 Fifth Avenue, New York, New York, pursuant to Notice, before Lynne D. Metz, a Shorthand Reporter and Notary Public of the State of New York.

	Page 374		Page 376
			· ·
1		1	to the transfer of the second of the
2	APPEARANCES:	2	having been duly sworn, resumed the
3	MANON MACONI MACODOD & CALLANTA	3	stand and testified further as follows:
4	THOMPSON WIGDOR & GILLY LLP	4	EXAMINATION (Cont'd)
5	Attorneys for Plaintiff	5	BY MR. FILOSA: 09:14:07
6	85 Fifth Avenue	6	Q. Now Mr. Rizzuto, this is the
7	New York, New York 10003	7	continuation of your first day of deposition,
8	BY: GREGORY N. FILOSA, ESQ.,	8	continuation from the first day of your deposition
9	of Counsel	9	testimony and the first day was held on March 22, 2011. 09:14:33
10		11	
11	THE PRICITE OF LAW ORDER LEE	1	Did you prior to today, prior to
12	FULBRIGHT & JAWORSKI L.L.P.	12	coming back here today did you review a copy of
13	Attorneys for Defendants	13	your transcript of the first day of your
14	666 Fifth Avenue	14 15	deposition? A No 09:14:44
15	New York, New York 10103	16	71. 110.
16	BY: NEIL G. SPARBER, ESQ.,		Q. Did you is there anything you want to go back from your first day of deposition
17	of Counsel	17 18	testimony to correct or clarify or anything like
18		19	that?
19	AT CO DRECENT.	20	A. No. 09:14:54
20	ALSO PRESENT:	21	Q. So you are comfortable with the
21	Anthony Baffo	22	testimony that you gave on March 22, 2011?
22	Bob Calvert - Videographer	23	MR. SPARBER: Before we go, we had
23		24	mentioned last time during the deposition
24	09:13:08	25	there was one area that he did want to clear 09:15:03
25	05.15.06 Page 375	2,3	Page 377
		1	R. Rizzuto
1 2	THE VIDEOGRAPHER: We are now on the	2	
3	record. I am Bob Calvert from Veritext New	3	up. MR. FILOSA: Did he clear it up?
4	York Reporting. Today's date is April 28,	4	MR. SPARBER: No. We ended it knowing
5	2011. The time on the video monitor is 9:14 09:13:21		he was coming back for a second day. So the 09:15:14
6		6	question is up to you whether you want him
7	a.m. We are here at the offices of	7	to clarify now or wait until the end for me
8	Thompson, Wigdor & Gilly located at 85 Fifth	8	to ask the question. Whatever your
9	Avenue New York, New York to continue the	9	preference.
10	videotape deposition of Robert Rizzuto in 09:13:35	10	MR, FILOSA: I am not certain I am 09:15:24
11	the matter of Anthony Baffo versus New York	11	going to ask the question, so why don't
12	Institute of Technology. The venue of this	12	you
13	case is the United States District Court for	13	MR. SPARBER: No, I would ask the
14	the Eastern District of New York.	14	question if you didn't.
15	Will counsel please identify 09:13:49	15	Q. If you would like to clarify something 09:15:30
16	themselves and say who they represent?	16	from the first day of your deposition testimony
17	MR. FILOSA: Gregory Filosa with	17	please do so. The floor is yours.
18	Thompson, Wigdor & Gilly representing	18	A. Okay.
19	plaintiff Anthony Baffo.	19	MR. SPARBER: Do you recall what we
20	MR. SPARBER: Neil Sparber with 09:13:59	20	had spoken about yesterday about the 09:15:38
21	Fulbright & Jaworski, attorneys for the	21	clarification?
22	defendant.	22	THE WITNESS: Yes.
23	THE VIDEOGRAPHER: Will our court	23	MR. SPARBER: Would you please explain
24	reporter please swear in the witness?	24	to Mr. Filosa since you remember how you
25	ROBERT RIZZUTO, 09:14:06	25	would like to clarify? 09:15:46

2 (Pages 374 to 377)

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516-608-2400

R. Rizzuto we were both in the office at the time but I believe he asked if he could talk to me and at that point sure and sat down and we have a little table in the office itself and sat down and o9:21:09 Anthony proceeded to tell me about his diagnosis of HIV. Q. And was anyone else - strike that. What time of day was this? A. I am not sure. O9:21:21 Q. Was anyone else present in the office at that time? A. I am not sure. O9:21:21 O What about in the surrounding offices, did you see anyone else that morning in the offices? A. I don't believe so. Q. And what specifically did Mr. Baffo tell you? A. It was pretty brief. From what I purember, I don't remember exact words, I am sure, but that he was diagnosed with HIV and I was you but that he was diagnosed with HIV and I was you but that he was diagnosed with HIV and I was you but that he was diagnosed with HIV and I was you but that he was diagnosed with HIV and I was you but that he was diagnosed with hit. Page 383 R. Rizzuto Q. Did you ask him how he had contracted the HIV virus? A. I don't think I did, but I don't remember for sure. Q. Did you ask him how he had contracted the HIV virus? A. I don't think I did, but I don't remember for sure. Q. Did you ask him anything else? Did you ask him anything during this meeting? A. I don't memember that I did. As I said it was pretty brief. R. Rizzuto Q. And what did you do when you got to Miss Jablonsky's office, you actually went to see her 09:24:14 R. Rizzuto Q. And what did, but I don't conversation. Q. And what did, out dive or did you walk? A. Yes. Q. And what did you do when you got to Miss Jablonsky's office, you actually went to do and D. Q. And what specifically did Mr. Baffo A. I don't themeting end? A. I don't that meeting? A. I think I went to Carol Jablonsky's office because that was the day we were supposed to release the position. That's what the was the day we were supposed to release the position. That's what I think that Do you ask him how the fact the	Г	Page 382	Τ	Page 384
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6 Anthony proceeded to tell me about his diagnosis 7 of HIV. 8 Q. And was anyone else — strike that. 9 What time of day was this? 10 A. I am not sure. 11 Q. Was anyone else present in the office 12 at that time? 13 A. No. 14 Q. What about in the surrounding offices, 15 did you see anyone else that morning in the 16 offices? 17 A. I don't believe so. 18 Q. And what specifically did Mr. Baffo 19 tell you? 19 A. It was pretty brief. From what I 09:21:41 20 A. It was pretty brief. From what I 09:21:41 21 remember, I don't remember exact words, I am sure, 22 but that he was diagnosed with HIV and I was you 23 know okay and I was taken back, but then he 24 proceeded to tell me how he thinks that he was 25 diagnosed with it. 19 Q. Did you ask him how he had contracted 3 the HIV virus? 4 A. I don't tremember that I did. As I 9 said it was pretty brief. 10 Q. Did you ask him anything else? Did 7 you ask him anything during this meeting? 8 A. I don't remember that I did. As I 9 said it was pretty brief. 10 Q. And how did the meeting end? 11 A. I believe that I said to him is there 12 anything — if you need anything or if you need 13 any time or whatever you need to do so, 15 Q. And this was all you were sitting at 09:22:25 16 Q. And this was all you were sitting at 09:22:25 17 A. I think I did because that was supposed to happen later in 09:2 18 the thit was the was supposed to happen later in 09:2 19 that but I am not exactly sure the time we had the 10 conversation. 14 Q. When you say you went to Miss 15 Jablonsky's office, you actually went to see her 09:24 16 in person? 17 A. I think I did. 18 Q. When you actually went to see her 09:24 16 in person? 17 A. I think I did. 20 Where is her office — strike that: 21 A. Probably a three minute drive. 22 A. Rore than likely I would have driven. 23 And did you drive or did you walk? 24 A. More than likely I would have driven. 25 Campuses? 26 A. I don't remember that I did. As I 27 A. Polably a three minute drive. 28 A. I don't think I did. As I 29 Said it was pretty brief. 30		-	1	
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8 Q. And was anyone else strike that. 9 What time of day was this? 10 A. I am not sure. 11 Q. Was anyone else present in the office 12 at that time? 13 A. No. 14 Q. What about in the surrounding offices, 15 did you see anyone else that morning in the 16 offices? 17 A. I don't believe so. 18 Q. And what specifically did Mr. Baffo 19 tell you? 10 A. It was pretty brief. From what I 09:21:41 21 remember, I don't remember exact words, I am sure, 22 but that he was diagnosed with HIV and I was you 23 know okay and I was taken back, but then he 24 proceeded to tell me how he thinks that he was 25 diagnosed with it. 10 Q. Did you ask him anything else? Did 7 you ask him anything during this meeting? 24 A. I don't think I did, but I don't 25 remember for sure. Q. Did you ask him anything else? Did 7 you ask him anything during this meeting? 3 A. I don't memember that I did. As I 9 said it was pretty brief. 10 Q. And how did the meeting end? 10 Q. And how did the meeting end? 11 A. I believe that I said to him is there 12 anything if you need anything or if you need 13 any time or whatever you need to do so. 15 Q. And this was all you were supposed to helecase that was supposed to happen later in 09:22.131 10 I did because that was supposed to happen later in 09:24 11 the morning. So this obviously had to be before 12 that but I am not exactly sure the time we had the 13 on versation. 14 Q. When you say you went to Miss 14 Q. Where is her office strike that. 18 Q. Where is her office strike that. 19 Where was her office at the time in relation to your office? 20 Q. A three minute drive. 21 A. Probably a three minute drive. 22 Land trive. 23 A. A More than likely I would have driven. 24 A. More than likely I would have driven. 25 Campuses? 3 A. Yes. 4 A. I don't remember that I did. As I 9 said it was pretty brief. 10 Q. And how did the meeting end? 10 Q. And how long was your meeting with its is a diagnosis and said to the you know this is I am side to the provention whith its I am side to the time that yo	1	• •	1	
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16 in person? 17 A. I don't believe so. 18 Q. And what specifically did Mr. Baffo 19 tell you? 20 A. It was pretty brief. From what I 09:21:41 21 remember, I don't remember exact words, I am sure, 22 but that he was diagnosed with HIV and I was you 23 know okay and I was taken back, but then he 24 proceeded to tell me how he thinks that he was 25 diagnosed with it. Page 383 1 R. Rizzuto 2 Q. Did you ask him how he had contracted 3 the HIV virus? 4 A. I don't think I did, but I don't 5 remember for sure. Q. Did you ask him anything else? Did 3 you ask him anything during this meeting? 4 A. I don't remember that I did. As I 5 said it was pretty brief. 4 Q. And how did the meeting end? 5 Q. And how did the meeting end? 6 Q. And how did the meeting end? 7 Q. And how did the meeting end? 8 A. I believe that I said to him is there 10 any time or whatever you need to do so. 10 Q. And this was all you were sitting at 09:22:39 16 Q. And this was all you were sitting at 09:22:39 17 A. I think I did. 18 Q. Where is her office ar strike that. 19 Where was her office at the time in 19 relation to your office? 10 Q. A three minute drive. 20 Q. A three minute drive. 21 A. Probably a three minute drive. 22 A. More than likely I would have driven. 23 And did you drive or did you walk? 24 A. More than likely I would have driven. 25 Q. And it's still her offices on NYIT's 09:24:25 Page 1 R. Rizzuto 2 Q. And what did you do when you got to 5 Miss Jablonsky's office? 10 Q. And how did the meeting end? 10 I believe she said to her you know this is I am 10 I believe she said to me that she needed to talk 09:24: 11 to Steve about it. 12 Q. And how long was your meeting with 13 Miss Jablonsky? 14 A. I am not sure. 15 Q. Would you say it was more or less than 09:25:			1	
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	15		15	Q. Would you say it was more or less than 09:25:08
10 the conherence table in yours and IVII. Batio's 10 live minutes?	16	the conference table in yours and Mr. Baffo's	16	five minutes?
17 office? 17 A. I don't believe it was a long meeting,	17	office?	17	A. I don't believe it was a long meeting,
18 A. Yes. 18 but I couldn't put a time frame on it.	18	A. Yes.	18	
19 Q. Did Mr. Baffo say anything else other 19 Q. What else did you discuss with Miss	19	Q. Did Mr. Baffo say anything else other	19	Q. What else did you discuss with Miss
20 than what you testified to today? 09:22:53 20 Jablonsky other than what you testified to today? 09:2		than what you testified to today? 09:22:53		Jablonsky other than what you testified to today? 09:25:23
21 A. I don't remember that he did.	21	A. I don't remember that he did.		
Q. Did he do anything else? 22 Q. Was it shorter or longer than your		Q. Did he do anything else?	22	· · · · · · · · · · · · · · · · · · ·
A. What do you mean by do? 23 meeting with Mr. Baffo which you've already			23	
Q. Anything other than what you had 24 described was brief?	24			
25 testified to strike that. 09:23:04 25 A. Really hard to remember. I don't 09:25:36	25	testified to strike that. 09:23:04	25	A. Really hard to remember. I don't 09:25:36

4 (Pages 382 to 385)

	Page 410	Γ	Page 412
1	R. Rizzuto	1	R. Rizzuto
2	August. Unfortunately, the way timing works at	2	September?
3	NYIT and we have had past situations where	3	A. No.
4	eliminations were happening and it took three or	4	Q. And you have looked for those
5	four months for it to happen. This had to happen. 09:53:35	5	documents; right? 09:55:34
6	This was a plan that we and yes, it was my	6	A. I have.
7	ultimate idea and decision to do that initially,	7	Q. You thought there were some but you
8	but when it came up to the timing on this and the	8	weren't able to find any; is that right?
9	23rd came around and the decision was made to go	9	A. That's correct.
10	to do it on the Monday I had nothing to do with 09:53:53	10	Q. So there is no documents out there 09:55:39
11	that decision nor would I have even tried then at	11	which show you wanted to eliminate the general
12	that point to say no, I don't think we should do	12	manager position in September of 2009?
13	it because it had to happen.	13	A. No.
14	Q. Why did it have to happen? Strike	14	Q. I guess I am still trying to get an
15	that. 09:54:08	15	answer to my question why the general manager 09:56:03
16	Well, my first question is: Why did	16	position had to be eliminated during the week of
17	it have to happen? You said that twice in your	17	October 16th.
18	prior answer.	18	A. The only way that I can answer that is
19	A. Because I needed to make a business	19	my past experience is that just happened to be
20	decision here. This was a business decision. 09:54:15	20	that particular week because when Mr. Aubrey sat 09:56:18
21	Q. But as far as the timing why did it	21	down and signed the document.
22	have to happen then?	22	Q. But you had testified at the first day
23	A. You are referring to the 26th?	23	of your deposition that what you wanted to do was
24	Q. No, I am referring first to the 23rd.	24	eliminate the general manager position and use
25	Why did the elimination of the general 09:54:31	25	those funds to support other positions at NYIT; 09:56:32
	Page 411		Page 413
1	R. Rizzuto	1	R. Rizzuto
2	manager position in your mind have to happen on	2	right strike that, at the de Seversky Center;
3	the 23rd?	3	right?
4	A. That just happened to be a date we	4	A. Yes.
5	chose because Mr. Aubrey finally signed the 09:54:43	5	Q. And which two positions did you want 09:56:40
6	document on the 16th.	6	to use the general manager salary to fund?
7	Q. And you wanted to eliminate the	7	A. I wanted to bump Eric into an
8	position as soon as possible?	8	operations manager and bump his salary up a little
9	A. I don't I wanted to start thinking	9	bit and then create I believe at the time it was a
10	about eliminating the position back in August. 09:54:55	10	captain's position. No. At the time it was the 09:57:00
11	That was the plan to start to think about doing	11	sales position, then a captain's position I
12	this, what was the plan going to be.	12	believe.
13	Q. But ultimately the position wasn't	13	Q. And had those positions been hired at
14	eliminated until the middle of October, October	14 15	the time the general manager position was eliminated? 09:57:15
15 16	16th is when Mr. Aubrey signed the memo 09:55:08 eliminating the position; correct?	16	A. The position I don't know timing
17	A. Yes.	17	exactly well, but the position for Eric moving
18	Q. And then you wanted to complete the	18	into operations manager afterwards happened with
19	elimination of the position by the end of that	19	the bump. The Eric then came to me and said to
20	week; right? 09:55:19	20	me I don't believe that we need a sales position. 09:57:32
21	A. I wanted to complete the elimination	21	I think that we can use the money elsewhere as a
22	of this position in September all being said.	22	bar captain I believe the conversation was. I
23	Q. Do you have any documents that would	23	think we have documentation on that.
24	show that you wanted to complete the elimination	24	Q. On the conversation?
25	of the position, the general manager position in 09:55:30	25	A. No, on the paperwork for the bar 09:57:43
E- U	or the position, the goldent manager position in 07.33.30		11. 110, 011 die paper nout 101 die 001 07.57.75

11 (Pages 410 to 413)

	Da 41.4		Dama 410
	Page 414		Page 416
1	R. Rizzuto	1	R. Rizzuto
2	captain.	2	Q. But in your mind the elimination of
3	Q. But at the time the general manager	3	the general manager position had to occur during
4	position had been eliminated, those other	4	the week of the 16th; right?
5	positions and I am referring to the two other 09:57:53	5	A. If Mr. Aubrey had filled the paperwork 10:00:01
6	positions not Mr. Redlich's position, those two	6	out and signed it on the 24th of October, then it
7	other positions hadn't yet been filled; right?	/	would have happened right after that. Again, I
8	A. No.	8	have to tell you that it's a matter of sometimes
9	Q. Had anyone been interviewed for those	9	we just have to wait for these signatures to
10	positions? 09:58:05	10	happen and the process to go through. 10:00:14
11	A. My recollection of that is that we	11	Q. But in this case Mr. Aubrey didn't
12	were, I think we were advertising for them, but I	12	sign, didn't sign the authorization to eliminate
13	don't remember exactly when we actually hired	13	the position until October 16th; right?
14	people for the position.	14	A. Yes, that's the date.
15	Q. Do you know whether or not anyone had 09:58:16	i	Q. And as soon as he signed that you 10:00:26
16	been offered any of those positions at the time	16 17	wanted to eliminate the position what week; right? A. Yes.
17	that Mr. Baffo's employment was eliminated on	18	A. 1 es. MR. FILOSA: Could we mark this as
18	October 26th?	19	Rizzuto Exhibit 20.
19	A. I don't remember. O. So my question is: Why did the 09:58:29	20	(Rizzuto Exhibit 20, a two-page 10:01:00
20	(21	document Bates stamped D 03417 to 3418,
21	general manager position have to be eliminated	22	marked for identification, as of this date.)
22	before these other positions were filled or had	23	Q. Now you have been shown a document
23	even been offered to anyone?	24	that's been marked as Rizzuto Exhibit 20. It is a
24	A. Typically the policy of the college is you can't open up a position. The paperwork gets 09:58:43	ł	two-page document Bates stamped D 03417 to 3418. 10:02:04
23		23	
	Page 415		Page 417
, 1	R. Rizzuto	1	R. Rizzuto
2	filled out after the prior position is vacant.	2	Please review it and let me know when you are
3	Q. But in this case the paperwork had	3	ready.
4	already been filled out while the general manager	4	A. Yes, I am ready.
5	position was still filled; right? 09:58:56	5	Q. And this is an e-mail chain between 10:02:33
6 7	A. I don't remember. O. You don't remember when NYIT had	6	you and Mr. Redlich; right? A. Yes.
/		'	A. ies.
		1 0	O Do you recall this a mail shair?
8	started posting for the two positions that you had	8	Q. Do you recall this e-mail chain?
9	planned to fund with Mr. Baffo's salary?	9	A. No.
9 10	planned to fund with Mr. Baffo's salary? A. I am sure we have documentation on it, 09:59:07	9 10	A. No. Q. But directing your attention to the 10:02:39
9 10 11	planned to fund with Mr. Baffo's salary? A. I am sure we have documentation on it, 09:59:07 but I believe I even had Anthony start to because	9 10 11	A. No. Q. But directing your attention to the 10:02:39 third e-mail from the top, it is an e-mail from
9 10 11 12	planned to fund with Mr. Baffo's salary? A. I am sure we have documentation on it, 09:59:07 but I believe I even had Anthony start to because the plan was in motion, I had him starting to put	9 10 11 12	A. No. Q. But directing your attention to the 10:02:39 third e-mail from the top, it is an e-mail from you to Mr. Redlich dated October 23, 2009 at 9:37
9 10 11 12 13	planned to fund with Mr. Baffo's salary? A. I am sure we have documentation on it, 09:59:07 but I believe I even had Anthony start to because the plan was in motion, I had him starting to put some advertising on one of the websites, but I	9 10 11 12 13	A. No. Q. But directing your attention to the 10:02:39 third e-mail from the top, it is an e-mail from you to Mr. Redlich dated October 23, 2009 at 9:37 a.m.?
9 10 11 12 13 14	planned to fund with Mr. Baffo's salary? A. I am sure we have documentation on it, 09:59:07 but I believe I even had Anthony start to because the plan was in motion, I had him starting to put some advertising on one of the websites, but I don't know I don't remember whether it was	9 10 11 12 13 14	A. No. Q. But directing your attention to the 10:02:39 third e-mail from the top, it is an e-mail from you to Mr. Redlich dated October 23, 2009 at 9:37 a.m.? A. Yes.
9 10 11 12 13 14 15	planned to fund with Mr. Baffo's salary? A. I am sure we have documentation on it, 09:59:07 but I believe I even had Anthony start to because the plan was in motion, I had him starting to put some advertising on one of the websites, but I don't know I don't remember whether it was actually connected to what NYIT usually uses. It 09:59:21	9 10 11 12 13 14 15	A. No. Q. But directing your attention to the 10:02:39 third e-mail from the top, it is an e-mail from you to Mr. Redlich dated October 23, 2009 at 9:37 a.m.? A. Yes. Q. Do you see that? And in that the 10:02:52
9 10 11 12 13 14 15 16	planned to fund with Mr. Baffo's salary? A. I am sure we have documentation on it, 09:59:07 but I believe I even had Anthony start to because the plan was in motion, I had him starting to put some advertising on one of the websites, but I don't know I don't remember whether it was actually connected to what NYIT usually uses. It 09:59:21 might have been Craig's List, but I don't know for	9 10 11 12 13 14 15 16	A. No. Q. But directing your attention to the 10:02:39 third e-mail from the top, it is an e-mail from you to Mr. Redlich dated October 23, 2009 at 9:37 a.m.? A. Yes. Q. Do you see that? And in that the 10:02:52 first line of your e-mail you say: Okay FIY, the
9 10 11 12 13 14 15 16	planned to fund with Mr. Baffo's salary? A. I am sure we have documentation on it, 09:59:07 but I believe I even had Anthony start to because the plan was in motion, I had him starting to put some advertising on one of the websites, but I don't know I don't remember whether it was actually connected to what NYIT usually uses. It 09:59:21 might have been Craig's List, but I don't know for sure.	9 10 11 12 13 14 15 16 17	A. No. Q. But directing your attention to the 10:02:39 third e-mail from the top, it is an e-mail from you to Mr. Redlich dated October 23, 2009 at 9:37 a.m.? A. Yes. Q. Do you see that? And in that the 10:02:52 first line of your e-mail you say: Okay FIY, the thing I spoke to you about is not happening right
9 10 11 12 13 14 15 16 17	planned to fund with Mr. Baffo's salary? A. I am sure we have documentation on it, 09:59:07 but I believe I even had Anthony start to because the plan was in motion, I had him starting to put some advertising on one of the websites, but I don't know I don't remember whether it was actually connected to what NYIT usually uses. It 09:59:21 might have been Craig's List, but I don't know for sure. Q. Would that have been inconsistent with	9 10 11 12 13 14 15 16 17	A. No. Q. But directing your attention to the 10:02:39 third e-mail from the top, it is an e-mail from you to Mr. Redlich dated October 23, 2009 at 9:37 a.m.? A. Yes. Q. Do you see that? And in that the 10:02:52 first line of your e-mail you say: Okay FIY, the thing I spoke to you about is not happening right away or today at all.
9 10 11 12 13 14 15 16 17 18	planned to fund with Mr. Baffo's salary? A. I am sure we have documentation on it, 09:59:07 but I believe I even had Anthony start to because the plan was in motion, I had him starting to put some advertising on one of the websites, but I don't know I don't remember whether it was actually connected to what NYIT usually uses. It 09:59:21 might have been Craig's List, but I don't know for sure. Q. Would that have been inconsistent with NYIT's general policies of eliminating the	9 10 11 12 13 14 15 16 17 18	A. No. Q. But directing your attention to the 10:02:39 third e-mail from the top, it is an e-mail from you to Mr. Redlich dated October 23, 2009 at 9:37 a.m.? A. Yes. Q. Do you see that? And in that the 10:02:52 first line of your e-mail you say: Okay FIY, the thing I spoke to you about is not happening right away or today at all. Is that a reference to the meeting
9 10 11 12 13 14 15 16 17	planned to fund with Mr. Baffo's salary? A. I am sure we have documentation on it, 09:59:07 but I believe I even had Anthony start to because the plan was in motion, I had him starting to put some advertising on one of the websites, but I don't know I don't remember whether it was actually connected to what NYIT usually uses. It 09:59:21 might have been Craig's List, but I don't know for sure. Q. Would that have been inconsistent with NYIT's general policies of eliminating the position before filling out the paperwork for the 09:59:34	9 10 11 12 13 14 15 16 17	A. No. Q. But directing your attention to the 10:02:39 third e-mail from the top, it is an e-mail from you to Mr. Redlich dated October 23, 2009 at 9:37 a.m.? A. Yes. Q. Do you see that? And in that the 10:02:52 first line of your e-mail you say: Okay FIY, the thing I spoke to you about is not happening right away or today at all. Is that a reference to the meeting with Mr. Baffo about eliminating his position? 10:03:08
9 10 11 12 13 14 15 16 17 18 19 20	planned to fund with Mr. Baffo's salary? A. I am sure we have documentation on it, 09:59:07 but I believe I even had Anthony start to because the plan was in motion, I had him starting to put some advertising on one of the websites, but I don't know I don't remember whether it was actually connected to what NYIT usually uses. It 09:59:21 might have been Craig's List, but I don't know for sure. Q. Would that have been inconsistent with NYIT's general policies of eliminating the	9 10 11 12 13 14 15 16 17 18 19 20	A. No. Q. But directing your attention to the 10:02:39 third e-mail from the top, it is an e-mail from you to Mr. Redlich dated October 23, 2009 at 9:37 a.m.? A. Yes. Q. Do you see that? And in that the 10:02:52 first line of your e-mail you say: Okay FIY, the thing I spoke to you about is not happening right away or today at all. Is that a reference to the meeting with Mr. Baffo about eliminating his position? 10:03:08 A. I imagine it is, yes.
9 10 11 12 13 14 15 16 17 18 19 20 21	planned to fund with Mr. Baffo's salary? A. I am sure we have documentation on it, 09:59:07 but I believe I even had Anthony start to because the plan was in motion, I had him starting to put some advertising on one of the websites, but I don't know I don't remember whether it was actually connected to what NYIT usually uses. It 09:59:21 might have been Craig's List, but I don't know for sure. Q. Would that have been inconsistent with NYIT's general policies of eliminating the position before filling out the paperwork for the 09:59:34 other positions?	9 10 11 12 13 14 15 16 17 18 19 20 21	A. No. Q. But directing your attention to the 10:02:39 third e-mail from the top, it is an e-mail from you to Mr. Redlich dated October 23, 2009 at 9:37 a.m.? A. Yes. Q. Do you see that? And in that the 10:02:52 first line of your e-mail you say: Okay FIY, the thing I spoke to you about is not happening right away or today at all. Is that a reference to the meeting with Mr. Baffo about eliminating his position? 10:03:08 A. I imagine it is, yes.
9 10 11 12 13 14 15 16 17 18 19 20 21 22	planned to fund with Mr. Baffo's salary? A. I am sure we have documentation on it, 09:59:07 but I believe I even had Anthony start to because the plan was in motion, I had him starting to put some advertising on one of the websites, but I don't know I don't remember whether it was actually connected to what NYIT usually uses. It 09:59:21 might have been Craig's List, but I don't know for sure. Q. Would that have been inconsistent with NYIT's general policies of eliminating the position before filling out the paperwork for the 09:59:34 other positions? A. Yes.	9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. No. Q. But directing your attention to the 10:02:39 third e-mail from the top, it is an e-mail from you to Mr. Redlich dated October 23, 2009 at 9:37 a.m.? A. Yes. Q. Do you see that? And in that the 10:02:52 first line of your e-mail you say: Okay FIY, the thing I spoke to you about is not happening right away or today at all. Is that a reference to the meeting with Mr. Baffo about eliminating his position? 10:03:08 A. I imagine it is, yes. Q. Do you know whether or not this is

12 (Pages 414 to 417)

Page 424 Page 422 R. Rizzuto R. Rizzuto 1 this, but -- and I can't say that this is you were discussing this with Mr. Redlich? 2 connected to a termination. We started discussing A. I am not, no. 3 Q. And in this -- from this e-mail though Anthony's performance again, back in the 4 4 5 it seems to be you would have discussed with him 10:10:58 summertime and the thought in my mind what I 10:08:46 5 wanted to do and why and you know, I would imagine 6 -- strike that. that this was one of the case in point. 7 In this e-mail it appears you had 7 Q. Now when you are referring to you just 8 discussions with him about either Mr. Baffo's 8 -- strike that. 9 9 performance or the elimination of the general manager position; is that fair to say? 10:11:10 10 When you say we had been discussing 10:09:02 10 going back to the summertime, are you referring to A. It is fair to say that some 11 11 conversation regarding his performance has you and Mr. Redlich or you and Mr. Aubrey? 12 12 13 A. This particular instance would be Mr. 13 happened. 14 Q. Because you wouldn't just send an 14 Redlich. e-mail saying case in point without there being 10:11:19 15 Q. So your testimony is that going back 10:09:11 15 16 to the summer of 2009 you had been discussing Mr. some preliminary discussion about that? 16 A. Absolutely not. Baffo's performance with Mr. Redlich; right? 17 18 And this is dated October 20, 2009; A. He was discussing it with I and I was Q. 18 19 discussing it with him because he had his own 19 right? 20 10:11:30 20 frustrations with it. Yes, the answer is yes. 10:09:29 A. Yes, it is. O. And in these conversations, was there 21 Q. Now at any time after you learned 21 22 about Mr. Baffo's HIV status, was there any 22 any discussion about Mr. Redlich taking on the 23 discussion about not eliminating the position but 23 general manager position or the general manager transferring him to another position? duties, however you want to characterize it? 24 24 A. I believe that Carol Jablonsky posed 25 10:11:50 A. In all honesty I can't remember a 10:09:45 25 Page 423 Page 425 1 R. Rizzuto R. Rizzuto 1 that question to me and if there was any kind of a conversation to say that Eric I might have said to him this is the plan. I could tell you honestly lateral move it would probably have to be in a 3 supervisory position which I would not have agreed 4 though there was no plan to fill the general 5 manager position because I was doing the duties of 10:09:58 5 upon because that's where Anthony had his 10:12:08 it anyway. The plan ultimately was to move some 6 challenges in a supervisory position. 7 Q. And do you know when Miss Jablonsky bodies around and give a little bit more duties to 7 posed this question? 8 8 Q. And do you recall when those 9 A. I don't. 9 Q. Was it in your first meeting with her 10:12:21 conversations started? I am not talking about his 10:10:16 10 10 on October 23, 2009? performance, but talking about him taking on 11 12 additional duties. Strike that. 12 A. I have no recollection of when that 13 Do you recall when these conversations 13 would have taken place that conversation. occurred and when I talk about these conversations 14 Q. But you do recall that she posed that 14 question to you? 10:12:35 10:10:27 15 15 I am referring not to conversations about Mr. 16 Baffo's performance but about Mr. Redlich taking 16 A. I think she did. 17 Q. What was your response to that 17 on additional duties? question from her? 18 A. In the summertime whether it be the 18 A. Now I am trying to -- this is where 19 end of July or beginning of August. 19 20 Q. But you don't have any documents that 10:10:39 20 the confusion comes in for me. As I said to you, 10:12:57 21 would show you were discussing with Mr. Redlich 21 I think the conversation happened. What I am trying to decipher is whether this is a normal him taking on additional duties? 22 question that she asks if we are going to 23 A. I do not. 23 eliminate a position that's a normal question. Do 24 24 O. Are you aware of any documents that 25 might not be in your possession which would show 10:10:49 25 you have another -- I am trying to figure out for 10:13:11

14 (Pages 422 to 425)

	Case 2.10 eV 01243 EDVV ETB Document 33		3 3
	Page 494		Page 496
1	R. Rizzuto	1	R. Rizzuto
2	part of the leader on a daily basis.	2	indicated three ways in which they were used; to
3	Do you see that?	3	increase Mr. Redlich's salary, to fund a dining
4	A. I do.	4	room manager position and ultimately to hire a
5	Q. Is that narrative that Mr. Redlich 11:48:28	5	bartender captain position; is that correct? 11:51:06
6	needed to work on?	6	A. Yes.
7	A. As far as coming to work on time, no.	7	Q. And were these two other positions
8	Dressing the part of the leader on a daily basis,	8	ultimately filled?
9	I believe he could have dressed better.	9	A. The bar captain was filled and the
10	Q. And that's the same concern you talked 11:48:45	10	dining room manager was captain, yes. 11:51:17
11	about on day one of your deposition with respect	11	Q. What was captain, dining room?
12	to Mr. Baffo?	12	A. It was dining room captain not
13	A. It is.	13	manager.
14	Q. Where you took him to Joseph A. Bank	14	Q. And who was hired for that position?
15	and bought him some suits? 11:48:53	15	A. I think it was Brian Davis. 11:51:33
16	A. Yes.	16	Are you talking about the captain or
17	Q. Did you do the same with Mr. Redlich?	17	the bartender, the bartender captain? I am sorry,
18	A. I did not.	18	the server captain or the bartender captain?
19	Q. Now these other goals here listed on	19	Q. Why don't we stick with dining room
20	pages 1 and 2 of this exhibit, are these areas 11:49:11	20	captain or manager. I actually think it was the 11:51:48
21	that Mr. Redlich needed to work on?	21	dining room manager position, but I will defer to
22	A. They could have been areas that he	22	you on that one or the bartender captain position.
23	needed to work on or they could have been goals	23	Those are the two positions we are talking about.
24	that have not yet even been or recently spoken of.	24	Was the dining room captain or manager
25	Q. But there is a lot listed here; right? 11:49:31	25	position filled? 11:52:03
	Page 495		Page 497
1	R. Rizzuto	1	R. Rizzuto
2	A. Yes, there are.	2	A. Yes.
3	Q. So there is a lot of things he needs	3	Q. And do you know who filled that?
4	to work on or new goals that you were setting for	4	A. I think it was Brian Davis.
5	him? 11:49:40	5	Q. Do you know when he was hired? 11:52:11
6	A. Yes.	6	A. I don't.
7	Q. And as a result you rated him	7	Q. Is there someone named Roger?
8	developing/needs improvement for this year?	8	A. Echuarie, E-C-H-U-A-R-I-E. Q. And do you know when Mr. Echuarie was
9	A. Yes. Q. And you haven't changed his rating; 11:49:51	9	Q. And do you know when Mr. Echuarie was hired? 11:52:27
11	Q. And you haven't changed his rating; 11:49:51 right?	11	A. No, but maybe that was the position
12	A. Pardon me?	12	that we hired.
13	Q. You haven't changed his rating; right?	13	Q. Do you know what his position is?
		ł .	A. Dining room manager.
14		14	A. Dunig 100m manager.
15	A. No.	14	
	A. No.Q. It is still rated developing/needs 11:49:57	i	· · · · · · · · · · · · · · · · · · ·
15	A. No.	15	Q. And do you know when he was hired? 11:52:36
15 16	A. No. Q. It is still rated developing/needs 11:49:57 improvement?	15 16	Q. And do you know when he was hired? 11:52:36A. I don't know the date, no.
15 16 17	A. No. Q. It is still rated developing/needs 11:49:57 improvement? A. Yes.	15 16 17	Q. And do you know when he was hired? 11:52:36A. I don't know the date, no.Q. Do you know what his salary was?
15 16 17 18	A. No. Q. It is still rated developing/needs 11:49:57 improvement? A. Yes. Q. You haven't changed it to fully	15 16 17 18 19 20	 Q. And do you know when he was hired? 11:52:36 A. I don't know the date, no. Q. Do you know what his salary was? A. I think it was in the range of 38 to 41 maybe. Not positive. Q. And the funding for that position came 11:52:55
15 16 17 18 19 20 21	A. No. Q. It is still rated developing/needs 11:49:57 improvement? A. Yes. Q. You haven't changed it to fully proficient or anything like that? A. No. 11:50:05 Q. Now just going back to we talked a	15 16 17 18 19 20 21	 Q. And do you know when he was hired? 11:52:36 A. I don't know the date, no. Q. Do you know what his salary was? A. I think it was in the range of 38 to 41 maybe. Not positive. Q. And the funding for that position came 11:52:55 from the elimination of the general manager
15 16 17 18 19 20 21 22	A. No. Q. It is still rated developing/needs 11:49:57 improvement? A. Yes. Q. You haven't changed it to fully proficient or anything like that? A. No. 11:50:05 Q. Now just going back to we talked a little bit today as well as during the first day	15 16 17 18 19 20 21 22	 Q. And do you know when he was hired? 11:52:36 A. I don't know the date, no. Q. Do you know what his salary was? A. I think it was in the range of 38 to 41 maybe. Not positive. Q. And the funding for that position came 11:52:55 from the elimination of the general manager position?
15 16 17 18 19 20 21 22 23	A. No. Q. It is still rated developing/needs 11:49:57 improvement? A. Yes. Q. You haven't changed it to fully proficient or anything like that? A. No. 11:50:05 Q. Now just going back to we talked a little bit today as well as during the first day of your deposition about how the funds had been	15 16 17 18 19 20 21 22 23	 Q. And do you know when he was hired? 11:52:36 A. I don't know the date, no. Q. Do you know what his salary was? A. I think it was in the range of 38 to 41 maybe. Not positive. Q. And the funding for that position came 11:52:55 from the elimination of the general manager position? A. I think it did.
15 16 17 18 19 20 21 22	A. No. Q. It is still rated developing/needs 11:49:57 improvement? A. Yes. Q. You haven't changed it to fully proficient or anything like that? A. No. 11:50:05 Q. Now just going back to we talked a little bit today as well as during the first day of your deposition about how the funds had been used for Mr. Baffo's salary were used following	15 16 17 18 19 20 21 22 23 24	 Q. And do you know when he was hired? 11:52:36 A. I don't know the date, no. Q. Do you know what his salary was? A. I think it was in the range of 38 to 41 maybe. Not positive. Q. And the funding for that position came 11:52:55 from the elimination of the general manager position?

32 (Pages 494 to 497)

	Page 502		Page 504
1	R. Rizzuto	1	R. Rizzuto
2	Q. It seems like you are recalling	2	Q. And it also gives you a recommend
3	something?	3	distribution for each category; right?
4	A. Yes.	4	A. Yes, it does.
5	Q. What is it you are recalling? 11:57:52	5	Q. And it indicates for highly 12:00:46
6	A. Has something to do with the financial	6	accomplished the recommended distribution is 15
7	part of that. I think it was a pool. I don't	7	percent of the workforce; do you see that?
8	know whether they did that last year or not.	8	A. Yes.
9	There was one year they gave us a pool of dollars	9	Q. Is that something that you follow at
10	that we had to allocate the different fully 11:58:03	10	the de Seversky Center? 12:00:53
11	proficient, proficient. I vaguely remember that,	11	A. No.
12	but I couldn't explain it to you if I tried.	12	Q. Why not?
13	Q. My question though is if they give you	13	A. I use this tool specifically with an
14	any recommendations on the distribution of highly	14	individual on what their performance is or not.
15	accomplished, fully proficient ratings for your 11:58:25	15	Q. And this also indicates that the de 12:01:06
16	workforce?	16	Seversky Center, NYIT for fully proficient
17	A. Are you I just want to clarify.	17	recommends a distribution of 70 percent of the
18	Are you asking me do they give you	18	workforce?
19	amounts that you are allowed to give in those	19	A. Yes.
20	individual areas? 11:58:40	20	Q. And you also don't follow that either? 12:01:20
21	Q. No, that they recommend.	21	A. No.
22	A. I don't know if that's what that	22 23	Q. Why not?
23	criteria was about because I haven't used it.	l .	A. As I said, I wouldn't be filling out
24 25	There was one year and it might have been a couple of years ago and we had a different director of 11:58:52	24 25	these evaluations wouldn't be true to what they are if I fill them out and said okay, I need to 12:01:36
		23	
	Page 503		Page 505
1	R. Rizzuto	1	R. Rizzuto
2	R. Rizzuto human resources, so I don't know.	2	R. Rizzuto take 70 percent of my workforce and give them a
2 3	R. Rizzuto human resources, so I don't know. MR. FILOSA: Please mark this.	2	R. Rizzuto take 70 percent of my workforce and give them a fully proficient if that person wasn't fully
2 3 4	R. Rizzuto human resources, so I don't know. MR. FILOSA: Please mark this. (Rizzuto Exhibit 28, a two-page	2 3 4	R. Rizzuto take 70 percent of my workforce and give them a fully proficient if that person wasn't fully proficient.
2 3 4 5	R. Rizzuto human resources, so I don't know. MR. FILOSA: Please mark this. (Rizzuto Exhibit 28, a two-page document Bates stamped D 03264 through 3265, 12:00:04	2 3 4 5	R. Rizzuto take 70 percent of my workforce and give them a fully proficient if that person wasn't fully proficient. Q. So you didn't believe that strike 12:01:46
2 3 4 5 6	R. Rizzuto human resources, so I don't know. MR. FILOSA: Please mark this. (Rizzuto Exhibit 28, a two-page document Bates stamped D 03264 through 3265, 12:00:04 marked for identification, as of this date.)	2 3 4 5 6	R. Rizzuto take 70 percent of my workforce and give them a fully proficient if that person wasn't fully proficient. Q. So you didn't believe that strike 12:01:46 that.
2 3 4 5 6 7	R. Rizzuto human resources, so I don't know. MR. FILOSA: Please mark this. (Rizzuto Exhibit 28, a two-page document Bates stamped D 03264 through 3265, 12:00:04 marked for identification, as of this date.) Q. Now you have been shown a document	2 3 4 5 6 7	R. Rizzuto take 70 percent of my workforce and give them a fully proficient if that person wasn't fully proficient. Q. So you didn't believe that strike 12:01:46 that. Do you have any idea in the last
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34 (Pages 502 to 505)

Г	Page 506		Page 508
,	_	1	R. Rizzuto
1 2	R. Rizzuto that they are using this anymore to be honest with	1 2	A. Yes.
3	you. I don't remember seeing this last year. I	3	Q. What are they?
4	know Carol didn't also did not agree with the way	4	A. They are printouts or read outs of the
5	this was set up and there was a lot of problems 12:03:01	_	hand-scanned system at the de Seversky Mansion. 12:06:03
6	with the system and that was one thing that she	6	Q. And if you look at the first one the
7	had vowed to try and change. I haven't gotten any	7	first one is for you?
8	information so far I don't believe on this for	8	A. Yes.
9	this year yet.	9	Q. And the one marked Rizzuto Exhibit 30
10	Q. And this was put out in June of 2009 12:03:14	10	is for Mr. Baffo? 12:06:14
11	though; right?	11	A. Yes.
12	A. June 15, 2009, yeah.	12	Q. And if you could turn to well,
13	Q. And this is for use in the 2009 fiscal	13	strike that.
14	year performance reviews?	14	What these reflect is the time that
15	A. Yes. 12:03:25	15	you swipe in and out of work on a particular day 12:06:29
16	Q. And when did Miss Jablonsky vow to	16	for a particular time period; right?
17	change this?	17	A. Yes. Q. And if you look at the top of Rizzuto
18	A. One of the things is when she started	18	29 you see it is the time period for September 1,
19 20	her job that she became a human resources director. 12:03:37	19 20	2009 through October 31, 2009? 12:06:41
21	Q. And she communicated this to you?	21	A. Yes.
22	A. Yes.	22	Q. And that's the same for Mr. Baffo
23	Q. When was that?	23	which is marked Rizzuto Exhibit 30?
24	A. Probably after the first year she	24	A. Yes.
25	· · · · · · · · · · · · · · · · · · ·	25	Q. If I could just direct your attention 12:06:50
	Page 507		Page 509
1	R. Rizzuto	1	R. Rizzuto
2	this system.	2	to page 2 of Exhibit 29 which is yours, it shows
3	Q. So that would have been after the 2010	3	and I am directing you to the entry for Friday
4	fiscal year?	4	October 2, 2009.
5	A. Yes. 12:03:56	5	Do you see that? 12:07:03
6	MR. FILOSA: Mark these as 29 and 30	6	A. Yes.
7	please.	7	Q. It indicates that you swiped in at
8	(Rizzuto Exhibit 29, a three-page	8	5:18 a.m. and swiped out at 5:37 p.m.?
9	document Bates stamped D 08630 through D	9	A. Yes.
10	08632, marked for identification, as of this 12:05:40	10	Q. Do you believe that to be accurate? 12:07:11
11 12	date.) (Rizzuto Exhibit 30, a three-page	11 12	A. Yes. Q. And it says that you worked 12 hours
13	document Bates stamped D 08627 through D	13	Q. And it says that you worked 12 hours and 19 minutes that day?
14	08629, marked for identification, as of this	14	A. Yes.
15	date.) 12:05:24	15	O. Were you in the office the entire time 12:07:19
16	Q. Now Mr. Rizzuto, you have been shown	16	that day?
17	two documents. The first marked Rizzuto Exhibit	17	A. I have no idea.
18	29. The second marked Rizzuto Exhibit 30.	18	Q. Well, how does it typically work? You
19	Rizzuto Exhibit 29 is a three-page	19	swipe in and swipe out?
20	document Bates stamped D 08630 through D 08632. 12:05:34	20	A. The swiper is in the office itself. 12:07:29
21	Rizzuto 30 is a three-page document	21	So you will come in and you will swipe in and at
22	Bates stamped D 08627 through D 08629. Please	22	the end of the day when leaving we will swipe out.
23	review these and let me know when you are ready.	23	Q. So it doesn't strike that.
24	A. Ready.	24	How many other are you typically
25	Q. And do you recognize what these are? 12:05:55	25	outside of the office on any given day? 12:07:46

35 (Pages 506 to 509)